

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3904

IN THE MATTER OF:

Served March 17, 1992

Investigation of Compliance with)
the Compact by AIR COURIERS)
INTERNATIONAL GROUND TRANSPORTATION)
SERVICES, INC., Trading as)
PASSENGER EXPRESS, and UNITED)
MANAGEMENT CORPORATION, Trading as)
PASSENGER EXPRESS)

Case No. MP-92-05

On January 24, 1992, Madison Limousine Service, Inc. (Madison), filed a Formal Complaint against Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, (Air Couriers), and United Management Corporation, trading as Passenger Express (UMC). We dismissed the complaint for Madison's lack of standing but noted probable grounds for an investigation.¹

Three witnesses alleged in support of Madison's complaint that on October 4, 1991, and on a daily basis thereafter, they observed UMC and Air Couriers transport airline crews between Washington Dulles International Airport (Dulles) and Washington, DC, in two vehicles with a seating capacity of between 20 and 25 passengers each, and that Air Couriers' and UMC's Certificates of Authority at the time restricted their operations to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons each, including the driver. Each vehicle allegedly displayed both certificate numbers.

Air Couriers and UMC denied these allegations and alleged that the vehicles in question have been configured to carry approximately 15 passengers, including the driver, and have not been used by either carrier to carry more than 15 passengers, including the driver. Documents filed with the Commission by UMC and by UMC's and Air Couriers' insurance broker, however, indicate that during 1990 and 1991, UMC and/or Air Couriers owned or leased at least seven vehicles with a seating capacity of between 17 and 25 passengers each, five of which apparently were insured at one time or another for WMATC operations.

UMC's insurance documents on file with the Commission further show that since commencing WMATC operations, UMC maintained \$1.5 million in WMATC-related insurance coverage until February 18, 1992, when it increased that coverage to \$5 million. Air Couriers' insurance documents on file with the Commission show that from the beginning of 1990 to the present, Air Couriers has maintained \$1.5 million in WMATC-related insurance coverage.

¹ Madison Limo. Serv. v. Air Couriers Int'l Ground Trans. Servs., No. FC-92-01, Order No. 3903 (Mar. 17, 1992). The pleadings in the formal complaint proceeding are incorporated herein by reference. Commission Rule No. 22-05.

I. DISCUSSION

A. The Vehicle Capacity Restrictions in Air Couriers' and UMC's Certificates of Authority.

Air Couriers holds Certificate of Authority No. 55, issued May 29, 1991.² UMC holds Certificate of Authority No. 172, issued May 6, 1991.³ Each certificate was issued with the following restriction:

RESTRICTED TO (1) operations conducted according to the said carrier's applicable tariff on file with the Commission and (2) transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver;

Each carrier was advised at the time of issuance that insertion of the vehicle capacity restriction in its certificate was without prejudice to its right "to file an appropriate application to have the restriction removed upon the filing of proper evidence of insurance covering the operation of larger vehicles."⁴

UMC filed such an application on November 14, 1991. We conditionally granted that application on January 6, 1992, contingent on UMC's filing certain documents by February 5, 1992.⁵ The compliance date subsequently was extended to March 6, 1992.⁶ Air Couriers, on the other hand, has not applied as yet for removal of the vehicle capacity restriction in its certificate.

The Commission is interested in determining whether the vehicles Madison observed have a manufacturer's designed seating capacity of more than 15 persons each, including the driver.

B. The Commission's Insurance Requirements

The Compact, Title, II, Article XI, § 7(f), (g) provides as follows:

A person applying for or holding a Certificate of Authority shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay any final judgement against a carrier for bodily injury or death of a person, or for loss or

² In re Issuance of Certificate of Authority No. 55 to Air Couriers, No. MP-91-02, Order No. 3764 (May 29, 1991).

³ In re Issuance of Certificate of Authority No. 172 to United Mgmt. Corp., No. MP-91-02, Order No. 3736 (May 6, 1991).

⁴ Order No. 3764; Order No. 3736.

⁵ In re Application of United Mgmt. Corp., No. AP-91-40, Order No. 3875 (Jan. 6, 1992).

⁶ In re Application of United Mgmt. Corp., No. AP-91-40, Order No. 3883 (Feb. 7, 1992).

damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation subject to this Act.

A Certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.⁷

The Commission has prescribed the following minimum amounts of insurance, combined single limit, for certificated carriers:

Carriers with operating authority unrestricted as to vehicle seating capacity:	\$5,000,000
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Carriers with operating authority restricted as to vehicles seating 15 persons or less:	\$1,500,000 ⁸
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The purpose of these minimum insurance requirements is to ensure that carriers maintain the full \$5 million of coverage whenever operating vehicles with a manufacturer's designed seating capacity in excess of 15 persons each, including the driver -- regardless of how many passengers they actually transport at any one time.⁹ Carriers who wish to operate with only \$1.5 million in coverage must accept vehicle capacity restrictions in their certificates. Breaking the vehicle capacity restriction results in a violation of our minimum insurance requirements.

The Commission is interested in determining the extent to which any vehicles with a manufacturer-designed seating capacity in excess of 15 persons each, including the driver, have been used by UMC and/or Air Couriers in WMATC operations since the beginning of 1990. The Commission, therefore, will direct UMC and Air Couriers each to file a sworn affidavit listing all vehicles owned or leased at any time during the period beginning January 1, 1990, and ending on the date of this order, and showing which of these vehicles have been used in WMATC operations -- and when and by whom -- and which have not.

C. The Compact's Prohibition Against Sharing Operating Authority

The Compact, Title II, Article XI, Section 11(b) provides that "[a] person other than the person to whom an operating authority is issued by the Commission may not lease, rent or otherwise use that operating authority."

⁷ Similar provisions applied to holders of Certificates of Public Convenience and Necessity prior to amendment of the Compact, effective February 1, 1991. See Compact, Pub. L. No. 86-794, 74 Stat. 1031, Title II, Article XII, § 9(a) (1960).

⁸ Commission Regulation No. 58-03(c). A similar prescription applied to holders of charter Certificates of Public Convenience and Necessity prior to amendment of the Commission's regulations in January, 1991. See Commission Regulation No. 62-03 (effective Nov. 19, 1986).

⁹ See In re Application of RDM Enters., No. AP-91-18, Order No. 3801 (Aug. 6, 1991).

The three witnesses who supported Madison's complaint alleged that they observed two vehicles, each of which displayed both UMC's and Air Couriers' certificate numbers. The Commission believes the simultaneous display of two carriers' certificate numbers on a single vehicle constitutes and impermissible sharing of operating authority and misidentification of that vehicle. It also raises the potential for tariff violations.¹⁰

Commission Regulation No. 61 requires each WMATC carrier to display its name, trade name and certificate number on the side of each revenue vehicle. It is self evident that this requirement is for the benefit of the riding public. A passenger is entitled to know who is transporting him and under what authority. As far as he is concerned, a vehicle displaying two certificate numbers is operating under dual or joint operating authority. There is no provision in the Compact for dual or joint operating authority.

When we served notice of UMC's first application for operating authority, we noted that counsel for UMC had explained that Air Couriers is a wholly-owned subsidiary of UMC and that if UMC's application were granted "the two companies would be jointly managed and controlled and would share common facilities, presumably office space and garage facilities."¹¹ There was no mention in UMC's application of any intent to share revenue vehicles or operating authority, nor could we have permitted that. UMC and Air Couriers have gone far beyond sharing just office space and garage facilities, if the witnesses are to be believed.

The Commission is interested in determining whether UMC and Air Couriers have been operating vehicles that display both of their certificate numbers.

II. CONCLUSION

The Staff of the Commission shall be responsible for conducting this investigation.¹² Staff shall file a report offering its findings, conclusions and recommendations. Air Couriers and UMC shall be permitted an opportunity to respond to Staff's report and Staff shall be permitted an opportunity to reply. After receipt of Staff's report and any response and reply, the Commission shall take such action as it deems appropriate, including convening an oral hearing, dismissing the investigation or imposing sanctions.

THEREFORE, IT IS ORDERED:

1. That the Staff of the Commission shall investigate whether and to what extent Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, have violated the terms of

¹⁰ During most of the period relevant to this order, UMC and Air Couriers had on file with the Commission what appeared to be identical general tariffs, but Air Couriers was constrained to charge a contract tariff when carrying specified airline personnel.

¹¹ In re Application of United Mgmt. Corp., No. CP-90-03, Order No. 3552 (Sep. 11, 1990).

¹² See Compact, Title I, Article V, § 4 (Commission may delegate tasks).

their certificates, the Commission's minimum insurance requirements, the Compact's prohibition against the lease, rental or use of operating authority by anyone other than the grantee or the Commission's vehicle identification requirements.

2. Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, shall make their revenue vehicles available for inspection within 15 calendar days from the date of this order.

3. Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, shall each file with the Commission, within 15 calendar days from the date of this order, a sworn affidavit listing for each vehicle owned or leased at any time during the period beginning January 1, 1990, and ending on the date of this order, (a) the year, make, model, serial number, vehicle number, and license plate number (with jurisdiction); (b) manufacturer's designed seating capacity, nature of any alterations to manufacturer's designed seating capacity, who performed such alterations and when; and (c) date acquired, whether owned or leased, date disposed, all WMATC numbers displayed, and showing which of these vehicles were used in WMATC operations -- and when and by whom -- and which were not.

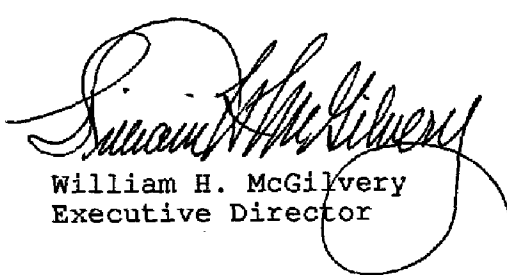
4. The Staff shall file within 35 calendar days from the date of this order a report offering their findings, conclusions and recommendations.

5. Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, may file a written response to Staff's report within 15 calendar days from the date of service of the report.

6. Staff may file a written reply to any response within 10 calendar days from the date of service of the response.

7. Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, shall give Staff their fullest cooperation during the investigation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director